IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL REVISION APPLICATION NO.371 OF 2004

Narendra M. Mehta ...Applicant
Vs.
C.B.I. EOW, Mumbai & Anr. ...Respondents

Shri. A.P.Mundargi with V.M. Shah for the Applicant.
Shri. H.V.Mehta for the Respondent No.1.
Shri. K.V.Saste, A.P.P. for the Respondent No.2.

CORAM : A. S. OKA, J.
DATED : AUGUST 04, 2005.

P.C.:

1. Rule. Shri. Mehta waives service for the Respondent No.1 and the learned A.P.P. waives service for the Respondent No.2. By consent, taken up for hearing forthwith.

2. The challenge in this Revision Application is to the Judgment and Order dated 7th July, 2004 passed by the learned Additional Sessions Judge, Mumbai by which the Application for discharge made by the Applicant has been rejected. By amending the Revision Application, a reliance is placed by the Applicant on Remand Application made by the Excise Department before the Chief Metropolitan Magistrate, Mumbai, and an Application for discharge made by the Applicant before the same court for offence under section 9C of the Central Excise Act, 1944 and section 132 of the Customs Act. The Applicant has also annexed to this Application the order passed by the learned Magistrate by which he was discharged. The order of discharge is passed on the basis of the consent of the Excise

Department.

3. After the Revision Application is argued for sometime, the learned Counsel appearing for the Respondent No.1 stated that the documents which are relied upon by the Applicant by amending the Revision Application were not produced before the learned Additional Sessions Judge. He submitted that the Respondent No.1 has no objection if the impugned order is set aside and the learned Additional Sessions Judge is directed to consider the Application for discharge afresh after considering the aforesaid documents which are produced in the Criminal Revision Application.

4. The Application for remand made by the Excise Department is of the year 1996 which was not placed before the learned Additional Sessions Judge. The Application for discharge has been made after passing impugned order. Therefore, the Application and order made thereon by the learned Magistrate were not placed before the learned Additional Sessions Judge. In my view, considering the assertions made in the Application for remand filed by the Superintendent of Central Excise before the learned Magistrate, the said Application for discharge and the order made thereon are very relevant for considering the Application for discharge made by the Applicant and the said documents

will have to be considered by the concerned Court. Hence, suggestion of the learned Counsel for the Respondent No.1 deserves to be accepted.

5. Hence, I pass the following order:

: O R D E R :

i) The impugned Order dated 07th July, 2004 is quashed and set aside and the Application for discharge made by the Applicant is restored to file.

ii) The learned Additional Sessions Judge, Mumbai will decide the said Application for discharge afresh in the light of the additional material which is produced by the Applicant in this Criminal Revision Application in the form of documents at Exhibit G, H and I.

iii) Both the parties will be at liberty to produce additional material before the learned Additional Sessions Judge.

iv) Application for discharge will be decided by the concerned Judge as expeditiously as possible.

v) All questions on merits are kept open.

vi) Parties to act upon an authenticated copy of

this order.

JUDGE